

1987

State of Utah v. Edison Crowley : Brief of Appellant

Utah Supreme Court

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UTAH COURT

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IN THE SUPREME COURT OF UTAH

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DOCKET NO. 870336 STATE OF UTAH

STATE OF UTAH,)

Plaintiff and Respondent,)

v.)

EDISON CROWLEY,)

Defendant and Appellant.)

BRIEF OF APPELLANT

No. ~~860341~~ 870336
Priority No. 2

For Respondent:

David Wilkinson
Attorney General

For Appellant:

John R. Bucher
Attorney for Defendant

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF UTAH

STATE OF UTAH

STATE OF UTAH,)	
Plaintiff and Respondent,)	
v.)	BRIEF OF APPELLANT
EDISON CROWLEY,)	
Defendant and Appellant.)	No. 860341 Priority No. 2

For Respondent:

David Wilkinson
Attorney General

For Appellant:

John R. Bucher
Attorney for Defendant

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STATEMENT OF ISSUES ON APPEAL

1) DID THE TRIAL COURT ERR IN EXCLUDING (EXCEPT FOR A RAPE CRISIS WORKER), ALL SPECTATORS, INCLUDING ALL OF DEFENDANT'S FAMILY, FROM THE COURT DURING THE TESTIMONY OF THE PROSECUTRIX, AND IN FURTHER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL ON THOSE GROUNDS.

2) DOES U.C.A. 78-7-4 VIOLATE THE UTAH AND UNITED STATES CONSTITUTION WHERE IT IS INTERPRETED AS ALLOWING THE EXCLUSION OF ALL SPECTATORS IN A TRIAL FOR RAPE.

3) IS U.C.A. 78-7-4 SO CONSTITUTIONALLY INFIRM THAT IT CANNOT BE APPLIED IN A MANNER CONSISTENT WITH UTAH AND UNITED STATES CONSTITUTION.

STATEMENT OF FACTS

Defendant was charged and convicted of rape in a trial which commenced on March 13, 1986 in Utah County before the Honorable Boyd L. Park.

After the jury was sworn and opening statements made, the prosecution moved to clear the courtroom of spectators, including the family of the defendant for so long as the prosecutrix was to testify, save for a Rape Crisis Center Worker (Transcript, page 17, line 18) pursuant to U.C.A. 1953, 78-7-4.

The defense counsel objected twice to the motion (Transcript page 18, line 7) and (Transcript page 20, Line 7). The trial court granted the motion and the court was so cleared of all spectators excluding the Rape Crisis worker.

The defendant was sentenced and his motion for a new trial on the issues above was denied June 10, 1986. The defendant appeals the denial of his motion for new trial and the granting of the trial motion to exclude the spectators.

The defendant's prior appeal on the same issues therein was dismissed by the Court on April 22, 1987 on the grounds that there was no final order and remanded for that purpose to the Fourth Judicial District Court for Utah County, State of Utah.

STATEMENT OF ARGUMENT

It has been held that U.C.A. 78-7-4 does not apply to criminal trials in that it is violative of Section 12, Article I of the Constitution of the State of Utah and the Sixth Amendment of the United States Constitution.

Excluding spectators, including the family of defendant, violates the Constitution of the United States and of the State of Utah without a showing that such exclusion is justified.

ARGUMENT

The appellant is seeking review of a trial court's decision to exclude all spectators from the courtroom during a rape victim's testimony where those spectators are family and friends of the defendant and of the victim and there is no evidence of disturbance or adverse behavior of those spectators.

Necessarily excluded from the issue is a discussion of when and how far a judge may go in excluding spectators who may or do cause disturbances or intimidation or when merely casual or perversely interested spectators may be excluded.

This Court has acknowledged the defendant's right to a public trial in rape and other cases as being founded upon the Utah Constitution, Article I, Sec. 12 and the Sixth Amendment of the Federal Constitution, State v. Harding, 635 p.2d 36 (1981).

In State v. Bonza, 72 Utah 177, 269 P. 480, the courtroom was cleared of spectators (save the sister of the prosecutrix) after the prosecutrix became hysterical. Later in the trial the exclusion was lifted. The Court concluded that the defendant was denied a public trial.

In the case at bar, the trial judge excluded all spectators during the prosecutrix's testimony but unlike Bonza there was no reason stated. The prosecution stated in the instant case (Trial Transcript page 17, line 21) that the prosecutrix was

"nervous" and that she was probably going to be intimidated by the presence of her family and the defendant's family but there is no indication the trial judge made a finding of that or that it was even considered by the trial judge. There was no showing on why the prosecutor thought that the prosecutrix may be intimidated.

In any event, the appellant contends that unless there is a showing of acts of intimidation by the family of the prosecutrix or the defendant, that exclusion would be improper and indeed the constitutional safeguard of a public trial is in part designed to provide a degree of intimidation in the sense that spectators help deter perjury and other miscarriages of justice, State v. Harding, Supra. State v. Beckstead, 88 P.2d 461, (concurring opinion p. 464). The harm of the exclusion in the case at bar was that those persons that should have been present were excluded for no justifiable reason and that the reason the prosecution wanted them excluded is one of the most important reasons the Constitutional provisions were drafted to encourage their presence.

In State v. Beckstead, 88 P.2d 461, the Court held that in prosecutions of an intimate sexual nature (referring to U.C.A. 78-7-4) that a reasonable number of defendant's family and friends must be left in the courtroom during such testimony, the Statute notwithstanding.

This Court has ruled that where a defendant has been denied a public trial, his prejudice is presumed, and he need not show

actual prejudice. State v. Jordan, 57 Utah 612, 196 P. 525.

In Jordan, supra, as in the instant case, the trial judge apparently ruled for complete exclusion on the basis of the Statute (both cases involve rape and the Statutes are essentially the same). The Jordan case, supra, the Beckstead case, supra, and the Bonza case, supra, dealt with what is now codified as U.C.A. 78-7-4. The cases in Utah have uniformly held that it is improper to rely on the Statute to exclude interested, non-obtrusive spectators.

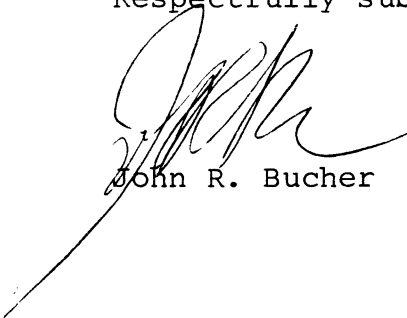
U.C.A. 78-7-4 has been interpreted in the above cases in various ways as to insure the constitutional rights of defendants. However, the Statute itself, in granting discretion to a trial court to exclude, should be invalid on its face as well as applied in the instant case and similar cases.

The defendant does not argue that there are no justifiable reasons for the exclusion as in the case at bar, but the defendant does argue that there are no justifiable reasons counterbalancing his right to a public trial.

CONCLUSION

This Court should remand this case back to the trial court for a new trial because the defendant was denied a public trial.

Respectfully submitted,



John R. Bucher

DELIVERY CERTIFICATE

Four true and correct copies of the foregoing were delivered to David L. Wilkinson, Attorney General, this 12th day of November, 1987.

